

**CITY OF OAKLAND**

**AGENDA REPORT**

05007-6 PM 4:37

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Public Works Agency  
DATE: October 18, 2005

**RE: RESOLUTION DENYING THE APPEAL FILED BY JESSE KUPERS, KIM GOODWIN, DEBORAH COWDER, KEITH WILSON AND JESSICA SEATON AGAINST THE DECISION OF THE PUBLIC WORKS AGENCY APPROVING THE ISSUANCE OF TREE REMOVAL PERMIT DRO4-019 FOR 335 HANOVER AVENUE, IN ORDER TO BUILD A NINE UNIT CONDOMINIUM BUILDING**

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**SUMMARY**

This report provides background information and a recommendation regarding a Tree Removal Permit for the proposed removal of three trees from a developed lot at 335 Hanover Avenue. In order to preserve the appellants' right to appeal the staff decision approving the permit application, staff requests the concurrence of the City Council in waiving two (2) appeal related deadlines contained in the Protected Tree Ordinance (PTO): (a) the hearing date set by the City Clerk shall be not more than thirteen (13) working days from the date of the decision by the Public Works Agency (PWA); and (c) if the appeal is not finally disposed of by the City Council within eighteen (18) working days of the date of the decision by the PWA, said decision shall be deemed affirmed, and the permit appeal denied.

Staff approved the Tree Removal Permit on the basis that the trees proposed for removal are growing within the footprint of, or too close to, the proposed construction of a new condominium building. There is no reasonable redesign of the site plan that would save the trees. In order to save the trees, the proposed condominium would have to be reduced in size significantly. The cost of their preservation to the property owner, including any additional design and construction expenses, exceeds the value of the trees. Staff has prepared a resolution that will enable the City Council to implement a decision that denies the appellants' appeal and allows the issuance of the tree permit.

**FISCAL IMPACTS**

There is no fiscal impact to the City's budget if the appeal is denied or upheld.

Item: \_\_\_\_\_  
City Council  
October 18, 2005

**BACKGROUND**

On May 13, 2005, Tree Services approved a permit to remove one Coast Redwood, one Coast Live Oak, and one Canary Island Date Palm from a developed lot at 335 Hanover Avenue. The applicant and agent for the property owners is Barbara Armstrong. The property owners are Sylvia and Raymond Leung. The appellants are adjacent property owners from Hanover Avenue and Stow Avenue. Mr. and Mrs. Leung originally applied for a tree removal permit on March 2, 2004. Mr. and Mrs. Leung re-designed the condominium building to reduce its size from 12 units to 9 units and improve its appearance.

A site design conference was held on February 10, 2005, in an effort to address the concerns of both the appellants and the applicant. Attending the meeting were city staff, Sylvia Leung, Barbara Armstrong, Jesse Kupers, Keith Wilson and other concerned parties. A re-design to save the Coast Live Oak tree was discussed; however, a re-design to save the Oak tree would require the applicant to reduce the livable floor space of the condominium building by approximately 4849 square feet or 52%. Staff felt a redesign of this project by that proportion would be unreasonable and would not adhere to the criteria listed in the Protected Trees Ordinance (PTO).

An appeal was filed by Jesse Kupers, Keith Wilson, Jessica Seaton and Deborah Cowder on May 18 – 20, 2005. The following outline was stated as having not been fully considered by city staff, thereby forming the basis for the appeal (attached wholly herein as Attachment A):

1. CEQA
2. Tree Ordinance Analysis
  - a. Intent
  - b. Technical Violations
    - i. Notice
    - ii. Redwood Ownership
  - c. Criteria for Tree Permit Review
    - i. Granting Permit
    - ii. Grounds for Permit Denial
3. Additional City Plans, Policies and Directives
4. Ecology
5. Legal Ramifications
6. Expert and Community Support

**KEY ISSUES AND IMPACTS**

The first key issue is the waiving of the appeal related deadlines in the PTO. Due to report preparation timeframes (and public notification due to the Sunshine Ordinance) the City Clerk is unable to set a hearing date within 13 working days, and the City Council cannot dispose of the appeal within 18 days from the date of the decision by PWA. The waiving of the deadlines has been a routine request to the City Council in previous tree permit appeal hearings.

Item: \_\_\_\_\_  
City Council  
October 18, 2005

The second key issue is whether staff correctly followed the PTO guidelines in approving Mr. and Mrs. Leung's tree removal application. Staff believes the PTO was properly applied and recommends that the City Council approve the resolution denying the appeal. The resolution allows the removal of three trees and requires the applicant pay an in lieu fee of \$600 due to the site having an insufficient planting area for replacement trees on the property. A landscape plan has been submitted that shows two *Lagerstroemia indica* x *L. fauriei* 'Natchez' (Crape Myrtle) trees to be planted as Official City Trees in sidewalk tree wells and other trees, shrubs and groundcover plants to be planted in the front and rear of the property.

Section 12.36.050 of the PTO lists the criteria used to determine if a tree should be removed or preserved (see Attachment C). This criteria review is a two-step process:

- First, the tree removals must be necessary in order to accomplish at least one of five possible objectives. In this case, the trees are within the footprint or in close proximity to a proposed structure.
- Second, regardless of the first determination, a finding of any one of five situations listed in the PTO is grounds for permit denial. For this project, four possible situations apply. The removal of a healthy tree could be avoided by: 12.36.050 (B)(1)(a), reasonable redesign of the site plan, prior to construction, 12.36.050 (B)(1)(b), trimming, thinning, tree surgery or other reasonable treatment, or 12.36.050 (B)(2), adequate provisions for drainage, erosion control, land stability or windscreen have not been made where such problems are anticipated as a result of the removals, and Section 12.36.050 (B)(4), the value of the trees is greater than the cost of their preservation to the property owner.

PWA was unable to support findings for denial based on the following:

- A re-design of the site plan, prior to construction, is not reasonable. The re-design of the proposed condominium project would not be reasonable based on the significant loss of floor space of approximately 4849 square feet or 52% of the total living space proposed.
- Due to the fact that the trees occupy such a large area within the parcel, trimming thinning, tree surgery or other reasonable treatments, i.e., root pruning, are not viable options to avoid removal of the trees. The lot is only 50 feet wide and the Oak tree's canopy extends 29 feet toward the center of said lot.
- If three trees are removed from the lot, Tree Services does not anticipate any problems with drainage, erosion control or land stability. Trees reduce soil surface erosion but are not a primary component of land stability. The loss of soil erosion benefits will be mitigated by replacement tree plantings and the construction of the building with its foundation and drainage system.
- The trunk diameter of the Redwood is 11 inches and the Oak is 27 inches. The Palm tree is 32 feet in height. The value of the three trees as determined by a formula developed by the International Society of Arboriculture is \$24,390. The cost of preserving the trees, including any additional design and construction expenses, will exceed \$24,390. Green Earth Engineering & Construction, Inc. estimated project redesign fees to be around

\$50,000. If preservation costs exceed the value of the trees proposed for removal, tree removal is permitted.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The project site will be an in-fill lot if the existing structure is relocated or demolished. The project does not involve any variances and qualifies for exemption from environmental review under Section 15332, in-fill development projects, of CEQA.

### **SUSTAINABLE OPPORTUNITIES**

The construction of a new condominium building meets the Mayor and City Council's Goals and Priorities to facilitate the development of housing for all incomes. Property tax revenues paid to the county will increase as a result of the construction of the new condominiums.

### **RECOMMENDATION AND RATIONALE**

Staff recommends that the City Council waive the appeal deadlines mandated by the PTO. Staff feels that it is important for the appellants to have the opportunity to present their case before the City Council.

Staff recommends that the City Council approve the resolution denying the appeal of tree permit application DR04-019 and allowing the issuance of a tree removal permit for three trees at 335 Hanover Avenue.

### **ALTERNATIVE RECOMMENDATION**

The City Council can reverse staff's decision and require the preservation of the trees. The City Council can require changes or impose additional conditions of approval that, in its judgment, are necessary to ensure the tree permit decision conforms to the PTO conditions of approval in section 12.36.060. This action would be taken if the City Council found that staff made an error or abused their discretion when they approved the removal of the three trees. Section 12.36.060 (E) of the PTO allows any other conditions that are reasonably necessary to implement the provisions of the chapter. This alternative would require the property owner to redesign the proposed condominium building.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council approve the resolution denying the appeal of tree removal permit DR04-019 and issuing the tree permit for the removal of three trees at 335 Hanover Street. The Conditions of Approval for the tree removal permit require the property owner to pay an in lieu fee of \$600.00 due to insufficient planting area existing for native tree replacements to grow to maturity.

Respectfully submitted,



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**RAUL GODINEZ, II, P.E.**

Director, Public Works Agency

Reviewed by:

Bruce Saunders, Assistant Director

Department of Infrastructure and Operations

Prepared by:

Dan Gallagher, Tree Supervisor II


Attachments:

A. Appeals filed

B. PWA decision letter, with conditions of approval

C. OMC Section 12.36.050 Criteria for Tree Removal Permit

APPROVED AND FORWARDED TO THE  
CITY COUNCIL:



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**OFFICE OF THE CITY ADMINISTRATOR**

Item: \_\_\_\_\_

City Council  
October 18, 2005

ATTACHMENT A

CITY OF OAKLAND  
OFFICE OF PARKS & RECREATION

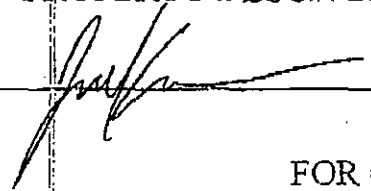
FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

TREE REMOVAL PERMIT APPEAL FORM <sup>05 MAY 19 AM 9:24</sup>

- 1. Date: 5/19/05
- 2. Appellant's Name: JESSE KUPERS
- 3. Appellant's Address: 339 HANOVER  
City, State & Zip: OAKLAND CA 94606  
Telephone #: (510) 763 4923
- 4. Tree Removal Permit Number: ~~355~~ DR04-019
- 5. Address of Tree Removal: 335 HANOVER
- 6. Basis for Appeal: See Attached

I HEREBY CERTIFY UNDER PENALTY OF PERJURY, THAT I AM THE OWNER OF:

- THE REAL PROPERTY DESCRIBED IN (5) ABOVE, OR
- REAL PROPERTY ADJOINING AND/OR CONFRONTING THE REAL PROPERTY DESCRIBED IN (5) ABOVE.

Signature:  Date: 5/19/05

FOR OFFICE USE ONLY

.....

Appeal Hearing Date: \_\_\_\_\_

Received By: \_\_\_\_\_

Appeal Fee Paid: \_\_\_\_\_ \*\$50 fee for Tree Appeal

Receipt #: \_\_\_\_\_

Note: Appeals must be heard by the tree committee at its next scheduled meeting.

.....  
When completed fax form to (510) 615-5845

CITY OF OAKLAND  
OFFICE OF PARKS & RECREATION  
FILED  
CITY CLERK  
OAKLAND

DE MAY 19 AM 9:25  
TREE REMOVAL PERMIT APPEAL FORM

- 1. Date: MAY 18, 2005
- 2. Appellant's Name: KIM GOODWIN
- 3. Appellant's Address: 456 STOW AVENUE  
City, State & Zip: OAKLAND CA 94606  
Telephone #: (510) 839 5681
- 4. Tree Removal Permit Number: DR 04-019
- 5. Address of Tree Removal: 335 HANOVER
- 6. Basis for Appeal: SEE ATTACHED

I HEREBY CERTIFY UNDER PENALTY OF PERJURY, THAT I AM THE OWNER OF:

- THE REAL PROPERTY DESCRIBED IN (5) ABOVE, OR
- REAL PROPERTY ADJOINING AND/OR CONFRONTING THE REAL PROPERTY DESCRIBED IN (5) ABOVE.

Signature: *Kim Goodwin* Date: 5/18/05

FOR OFFICE USE ONLY

Appeal Hearing Date: \_\_\_\_\_

Received By: Crystal Bing

Appeal Fee Paid: \$50- \*\$50 fee for Tree Appeal

Receipt #: 458

Note: Appeals must be heard by the tree committee at its next scheduled meeting.

When completed fax form to (510) 615-5845

CITY OF OAKLAND  
OFFICE OF PARKS & RECREATION

FILED  
OF THE CITY CLERK  
OAKLAND

TREE REMOVAL PERMIT APPEAL FORM 05 MAY 19 PM 2:53

- 1. Date: 5/18/05
- 2. Appellant's Name: DEBORAH COWDER
- 3. Appellant's Address: 460 STOW AVE OAKLAND  
City, State & Zip: CA 94606  
Telephone #: (510) 763 3540
- 4. Tree Removal Permit Number: DRO4-019
- 5. Address of Tree Removal: 335 HANOVER ST
- 6. Basis for Appeal: \_\_\_\_\_

see attached

I HEREBY CERTIFY UNDER PENALTY OF PERJURY, THAT I AM THE OWNER OF:

- THE REAL PROPERTY DESCRIBED IN (5) ABOVE, OR
- REAL PROPERTY ADJOINING AND/OR CONFRONTING THE REAL PROPERTY DESCRIBED IN (5) ABOVE.

Signature: [Signature] Date: 5/18/05

FOR OFFICE USE ONLY

Appeal Hearing Date: 9/20/05

Received By: Crystal Bing

Appeal Fee Paid: 50 - \*\$50 fee for Tree Appeal

Receipt #: 462

Note: Appeals must be heard by the tree committee at its next scheduled meeting.



Cleveland Heights Community  
Oakland, Ca 94606

May 19, 2005

City Councilmembers  
City of Oakland  
1 Frank Ogawa Plaza  
Oakland, Ca 94612

**Re: Appeal of Tree Permit to Remove the Majestic Coast Live Oak (*Quercus agrifolia*) and Coast Redwood (*Sequoia sempervirens*) at 335 Hanover Ave in Oakland.**

To City Councilmembers:

As an adjacent property owner of 335 Hanover Ave in Oakland, I hereby appeal the tree removal permit granted to the owners of 335 Hanover for the removal of a Coast Live Oak and Coast Redwood on the borders of their property. The removal of these trees would be contrary to the intent and policies legislated in the California Environmental Quality Act (CEQA), the Oakland Municipal Code (OMC), and portions on the Oakland General Plan. While we are not opposed to development at this site and welcome attempts to improve the quality and character of our community, the proposed tree removal and subsequent development would threaten the beneficial components of our community, pose a threat to human and environmental health and safety, and would diminish the quality of life in Oakland.

It is the responsibility of City of Oakland employees, officers, and elected officials to implement all existing regulations as stated in the City Charter. This responsibility often requires the balancing of competing needs and interests. In the case of the tree removal permit issued for 335 Hanover Ave, the purported benefits of tree removal and subsequent development are more than offset by the plethora of laws, regulations, and policies that would be contravened. City Staff has made an error and abuse of discretion by failing to fully consider the following issues and therefore the tree permit must be revoked.

1. CEQA
2. Tree Ordinance Analysis
  - a. Intent
  - b. Technical Violations
    - i. Notice
    - ii. Redwood Ownership
  - c. Criteria for Tree Permit Review
    - i. Granting Permit
    - ii. Grounds for Permit Denial
3. Additional City Plans, Policies, and Directives
4. Ecology
5. Legal Ramifications
6. Expert and Community Support

**1. California Environmental Quality Act**

The California Environmental Quality Act (CEQA) requires analysis of all potential environmental impacts from projects. The removal of the protected trees at 335 Hanover and subsequent development would have significant impacts which local and state law require an investigation of and attempts to mitigate. OMC 12.36.070(E) requires CEQA review for tree removal. OMC 17.158.270 requires that the overall project must be considered if any portion is to be exempted from environmental review. The overall project at 335 Hanover should not be exempted, as it would significantly impact every factor reviewed in a CEQA analysis, including but not limited to parking, noise, geology, ecology, and historic resources. The overall project at 335 Hanover CANNOT be exempted because of the following regulations:

- i. The project fails to meet the in-fill exemption requirements as
  - a. It is not consistent with ALL applicable general plan policies (see General Plan analysis below).
  - b. Approval of the project WOULD result in significant effects relating to traffic, noise, air quality, or water quality.
- ii. Oakland General Plan states and case law has supported the policy that "The ceqa 'infill exemption' cannot be used for projects that potentially impact historic resources."<sup>1</sup>
- iii. State Code provides exceptions to the categorical exemptions, including the following: *15300.2 Exceptions (b) All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place over time is significant (d) A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources<sup>2</sup>; (f) A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource (like the Cleveland Heights District).*<sup>3</sup>

The proposed project at 335 Hanover would have significant environmental impacts. Due to the above reasons, the City of Oakland is statutorily required to mandate further environmental analysis. To do otherwise would make the City vulnerable to legal challenge.

**2. Tree Ordinance Analysis**

**a. Intent**

*"A. Among the features that contribute to the attractiveness and livability of the city are its trees, both indigenous and introduced, growing as single specimens, in clusters, or in woodland situations. These trees have significant psychological and tangible benefits for both residents and visitors to the city.*

*B. Trees contribute to the visual framework of the city by providing scale, color, silhouette and mass. Trees contribute to the climate of the city by reducing heat*

<sup>1</sup> 2004 Housing Element Update, 6-9; This proposed development would destroy a C2+ contributing property to a potentially designated historic district, Cleveland Heights.

<sup>2</sup> While this exception refers specifically to Scenic Highways, The state recognized Lake Merritt as the first Wildlife refuge in North America, and the City of Oakland recognizes views to Lake Merritt and Downtown as protected scenic resources in OSCAR OS-10.1.

<sup>3</sup> Title 14. California Code of Regulations, Chapter 3. Guidelines for Implementation of the California Environmental Quality Act, Article 19. Categorical Exemptions, Section 15300.2

*buildup and providing shade, moisture, and wind control. Trees contribute to the protection of other natural resources by providing erosion control for the soil, oxygen for the air, replenishment of groundwater, and habitat for wildlife. Trees contribute to the economy of the city by sustaining property values and reducing the cost of drainage systems for surface water. Trees provide screens and buffers to separate land uses, landmarks of the city's history, and a critical element of nature in the midst of urban settlement.*

*C. For all these reasons, it is in the interest of the public health, safety and welfare of the Oakland community to protect and preserve trees by regulating their removal; to prevent unnecessary tree loss and minimize environmental damage from improper tree removal; to encourage appropriate tree replacement plantings; to effectively enforce tree preservation regulations; and to promote the appreciation and understanding of trees". OMC 12.36.010*

The tree ordinance is intended to protect and preserve significant trees in Oakland due to their vast array of benefits. The City's name is OAK-land in honor of the majestic species that once was found in great abundance. 335 Hanover has a majestic ancient oak whose value cannot be measured in monetary terms alone but is a part of the natural heritage of Oakland. This tree is the most significant tree in an area of Oakland that is heavily impacted by development. The tree ordinance, OMC 12.36 was passed by the Oakland City Council to protect trees just like this one.

**b. Technical Violations**

**i. Noticing**

Noticing of neighboring property owners and occupants was not properly done by city staff as required in 12.36.070(H). Neighboring occupants were never given notice of the tree permit application.

**ii. Ownership of Redwood**

The Coast Redwood has significant portions of both its canopy and root structure on Our property. We claim partial ownership of this tree and do not recognize the applicants right to remove it without our approval.

**c. Criteria for Tree Permit Review**

**i. Criteria for approval:** OMC 12.36.050 states that a permit for tree removal shall be issued "to avoid an unconstitutional taking of property." Revoking this tree permit would not constitute a taking of property. In *Pennsylvania Coal Company v. Mahon* (260 U.S. 393 (1922)), it was "ruled that if a land regulation was so restrictive that the landowner was robbed of economic viability of his or her land, the regulation constituted a taking under the Fifth Amendment." This was further clarified in *Lucas v. South Carolina Coastal Council* (505 U.S. 1003 (1992)) which stated, "compensation is due only when a regulation deprived a landowner of all property value."<sup>4</sup> If the owners at 335 Hanover could not remove the protected trees on their property, the property still would retain economic value. They currently rent the property and obtain economic benefit from that activity. Additionally, a project of smaller scale and impact could be designed that would

<sup>4</sup> [http://www.facsnet.org/tools/env\\_use/nat10takings.php3](http://www.facsnet.org/tools/env_use/nat10takings.php3)

still provide economic value. It is not a taking to require consideration of the negative impacts of a proposed development and to apply existing laws to protect human and environmental health and safety, both of which must be done in this case.

ii. **Criteria for denial:** "Removal of a healthy tree could be avoided (with) reasonable redesign of the site plan, prior to construction." (OMC 12.363.050) Again, a project could reasonably be designed that still provided economic value to the owners without contradicting City and State laws and regulations that protect environmental quality. The tree permit states that a redesign would result in a loss of 5,445 square feet of building space. Not only is this reasonable but it would help make the project consistent with a myriad of other statutory requirements.

The tree ordinance also allows for permit issuance if the value of the trees is not greater than the cost of their preservation to the property owner (OMC 12.36.050(B)(4)). This cost does not include lost opportunity cost as stated by Dan Gallagher in our community meeting regarding this permit nor is opportunity cost discussed in the OMC. The increased costs of tree preservation would be more than offset in the decreased costs of construction. Additionally, design and preparation expenditures by developers that ignore existing statutory requirements can not be allowed to act as a loophole to following the purpose and intent of the tree ordinance.

### 3. Additional City Plans, Policies, and Directives

*A. Among the features that contribute to the attractiveness and livability of the city are its trees, both native and introduced, and its views of the San Francisco Bay area, obtained from the variety of elevations found throughout the city.*

*B. Trees, whether growing singly, in clusters, or in woodland situations, produce a wide variety of significant psychological and tangible benefits for both residents and visitors to the city. Trees contribute to the natural environment of the city by modifying temperatures and winds, replenishing oxygen to the atmosphere and water to the soil, controlling soil erosion, and providing wildlife habitat. Trees contribute to the visual environment of the city by providing scale, color, silhouette and mass, and by creating visual screens and buffers to separate land uses, and promote individual privacy. Trees contribute to the economic environment of the city by stabilizing property values and reducing the need for surface drainage systems. Trees contribute to the cultural environment of the city by becoming living landmarks of the city's history and providing a critical element of nature in the midst of urban congestion and settlement.*

*C. Views, whether of the San Francisco Bay with its vistas of the city of San Francisco, the varied bridges of the Bay Area, numerous islands and ships, or of the Oakland hills with its vistas of trees and the hills themselves, also produce a variety of significant and tangible benefits for both residents and visitors to the city. Views contribute to the economic environment of the city by substantially enhancing property values. Views contribute to the visual environment of the city by providing inspiring panoramic vistas, and creating distinctive supplements to architectural design. Views contribute to the cultural environment of the city by*

*providing a unifying effect, allowing individuals to relate different areas of the city to each other in space and time." OMC 15.52.010*

This section of the OMC is intended to resolve conflicts between protected views and protected trees. The project at 335 Hanover would impact and destroy both protected views and protected trees.

In addition to components of the OMC outlined above, there are numerous portions of the City's General Plan that disallow the proposed tree removals and development. Staff has outlined this project's consistency with the City of Oakland's General Plan. While this project is consistent with Objective N3.2 (Encourage infill development) and Policy N6.2 (increased home ownership), it is only partially consistent with Objective N3 (which also encourages conservation) and N8 (encourages compatibility with neighborhood), and is currently inconsistent with the following policies, objectives, and actions:

- OSCAR Policy OS-4.2 Protection of Residential Yards: *Recognize the value of residential yards as a component of the City's open space system, and discourage excessive coverage of such areas by buildings or impervious surfaces.*
- OSCAR Policy OS-10.1 View Protection: *Protect the Character of existing scenic views in Oakland, paying particular attention to: a) views of the Oakland Hills from the flatlands; (b) views of downtown and Lake Merritt; (c) views of the shoreline; and (d) panoramic views from...hillside locations.*
- OSCAR Policy OS-10.2 Minimizing Adverse Visual Impacts: *Encourage site planning for new development, which minimizes adverse visual impacts and takes advantage of opportunities for new vistas and scenic enhancement.*
- OSCAR Action OS10.2.1 Visual Analysis for New Development: *On an on-going basis, the Office of Planning and Building will require visual analysis for new developments which could significantly impact views and vistas.*
- OSCAR Action CO-1.1.3 Consideration of Soil Constraints in Development: *Consider soil constraints such as shrink-swell and low soil strength in the design of buildings and roads. Suitable base materials and drainage provisions should be incorporated where necessary.*
- OSCAR Objective CO-2 Land Stability: *To minimize safety hazards, environmental impacts, and aesthetic impacts associated with development on hillsides and in seismic high-risk areas.*
- OSCAR Policy CO-2.1 Slide Hazards: *Encourage development practices which minimize the risk of land sliding.*
- Historic Preservation Element Policy 3.5 Historic Preservation and Discretionary Permit Approvals: *For any project involving complete demolition of Heritage Properties or PDHP's requiring discretionary City permits, the City will make a finding that: (1) the design quality of the proposed project is at least equal to that of the original structure and is compatible with the character of the neighborhood; or (2) the public benefits of the proposed project outweigh the benefit of retaining the original structure; or (3) the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.*

- Historic Preservation Element Action 3.8.1: Include Historic Preservation Impacts in City's Environmental Review Regulations.
- Historic Preservation Element Policy 3.9: Consistency of Zoning with Existing or Eligible Preservation Districts: (a) Unless necessary to achieve some other Oakland General Plan goal or policy which is of greater significance, the base zone of existing or eligible Preservation Districts shall not encourage demolition or removal of a district's contributing or potentially contributing properties nor encourage new construction that is incompatible with these properties.
- Housing Element Goal 4: Conserve and Improve Older Housing and Neighborhoods
- Housing Element Policy 7.4: Compact Building Design: Work with developers to construct new housing that reduces the footprint of new construction, preserves green spaces, and supports the use of public transit.

#### 4. Ecology

The open space at 335 Hanover is not only critical for the human community but for plants and animals as well. The community around 335 Hanover is densely populated with limited open space or natural heritage resources. The Coast Live Oak is by far the most impressive and valuable tree visible from Hanover Ave. The yard at 335 Hanover, in conjunction with neighboring yards, represents a significant open space and habitat resource within line of sight of Lake Merritt, North America's oldest wildlife refuge. Birds and other animals actively use this open space. The removal of the Coast Live Oak and Coast Redwood, the destruction of open space, and the subsequent development would have significant impacts well beyond the property lines. This project would not only remove significant ecological resources at 335 Hanover but would endanger protected trees and vegetation on neighboring properties. It is well established in the literature that large habitat nodes within line of sight of other habitat nodes are critical to the success of natural systems in urban environments. Flourishing natural systems within Oakland is a recurring goal of numerous policies and regulations within the City, including the Lake Merritt Master Plan.

#### 5. Legal Ramifications

The issuance of a permit for the removal of protected trees at 335 Hanover Ave is inconsistent with City and State policy and procedure as stated above. We reserve the right to introduce further information into the record at subsequent hearings as the time allotted for appeal of the Tree Removal Permit is short and relevant data, case law, and regulations are extensive. Additionally, we reserve the right to appeal any decision by Council to the Courts.

#### 6. Expert and Community Support

While only neighboring property owners have standing to appeal a tree removal permit, many people and groups are opposed to the removal of these trees. Attached is a petition from community residents and a letter of support from the Chair of the Department of Forestry at UC Berkeley.

### Conclusion

It is the right of any property owner to develop their property as they see fit. This is a constitutional right and is a critical component of the American way. This right has a limit though. People are free to do as they like up to the point that their activities infringe upon the rights of others or cause a public expense or danger. It is in the interest of ensuring proper balance between individual property rights and other people's rights, and the health and safety of the community and environment that laws regulating development exist. It is the duty of City Staff and officials to fully implement and enforce all of these laws including CEQA, the Tree Ordinance, and the Oakland General Plan.

The project at 335 Hanover is inconsistent with the purpose and intent of CEQA, the Tree Ordinance, the View Ordinance, OSCAR, the Historic Preservation Element, and the sustainable development of Oakland. City Staff has committed an error and abuse of judgment by failing to fully consider all these regulations and requiring the applicants for development at 335 Hanover to become compliant with all relevant laws and regulations.

### Recommendations

- 1) Reject the CEQA determination of exempt and require environmental review pursuant to CEQA regulations and court precedent.
- 2) Uphold the Appeal of the Tree Removal Permit allowing the destruction of the Coast Live Oak and Coast Redwood trees on the property at 335 Hanover Ave.

Sincerely,



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Jesse Kupers  
339-343 Hanover Property Owners

### Attachments:

1. Letter of Support from Prof. Joe McBride
2. Petition Against Tree Removal

UNIVERSITY OF CALIFORNIA, BERKELEY

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

BERKELEY • DAVIS • IRVINE • LOS ANGELES • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

5 MAY 19 AM 11:44  
BERKELEY, CALIFORNIA 94720  
(510) 642-7451  
FAX (510) 643-5439

COLLEGE OF NATURAL RESOURCES  
DEPARTMENT OF ENVIRONMENTAL SCIENCE, POLICY & MANAGEMENT  
DIVISION OF FOREST SCIENCE  
145 MULLFORD HALL MC 3114

May 18, 2004

Oakland City Council  
339 Hanover Street  
Oakland, CA 94606

Dear Council Members:

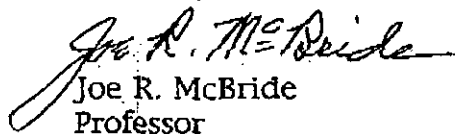
This letter is to express my opposition to the proposed removal of an oak and a redwood tree on Hanover Avenue. These are important amenities of the neighborhood as well as the city of Oakland. The oak tree is over two feet in diameter and the redwood is approaching a diameter of one foot. Both species are native to Oakland and, as I am sure you are aware, the name of the city of Oakland was derived from oak trees of this species (*Quercus agrifolia*) that grew around Lake Merritt. Redwood trees growing in the hills above the city, and now within the city limits, contributed to the early economy of Oakland and supplied lumber for the building of many of the original houses. Any trees of either of these species are important symbols of the heritage of Oakland and should be protected.

These two particular trees are also important to the city through their contribution to the visual character of the local neighborhood and their importance to wildlife habitat. Neighbors along Hanover see these trees from a variety of view points, along the street and from their windows and yards. Passersby also see these trees. The psychological and spiritual importance of seeing trees in urban neighborhoods has been confirmed in a number of scientific studies. But most of us do not need scientific studies to know how uplifting and invigorating the sight of a fine tree in the city can be. Trees in our local neighborhoods need to be protected to insure the continuity of these important values.

The habitat values of the two trees proposed for removal comes from the variety of food (acorns, seeds, insects that feed on the trees, and young shoots) for birds and squirrels and the nesting and resting spaces in the tree canopies. The size of these trees, especially the large oak, contribute to their individual value as habitat trees. This value cannot be replaced by the replanting of smaller trees. The proximity of the old oak to other old oaks in adjacent back yards adds to its particular habitat value. If it is removed, the habitat value of the nearby trees will be reduced.

Trees are important to all of us and I ask that you reject any proposal for the removal of these trees.

Sincerely,

  
Joe R. McBride  
Professor



# SAVE THIS HANOVER OAK TREE



The majestic Coast Live Oak (*Quercus agrifolia*) pictured above is threatened by proposed development at 335 Hanover Ave. We the undersigned neighbors oppose the cutting, removal, or damaging of this tree. This Oak provides vital aesthetic and ecological value to the community and is protected by City Ordinance. We also oppose the cutting of the Redwood and Palm trees on this property.

Name

Address

<u>Keith Paulino</u>	<u>595 Merritt Ave #8 Oakland 94611</u>
<u>Bertram Wells</u>	<u>923 53rd St. Apt B OAKLAND, CA 94608</u>
<u>Alexandra Mironch</u>	<u>2828 Cherry St. Berkeley CA 94705</u>
<u>Juliet Kletz</u>	<u>2838 Webster St. Berkeley, CA 94705</u>
<u>Jess Kletz</u>	<u>2838 Webster St. Berkeley CA 94705</u>
<u>Esmin Smith Tomesday</u>	<u>345 Hanover Ave Oakland 94606</u>
<u>Guan Burgin</u>	<u>2407 NY Dr Oak 94606</u>
<u>Judith Ritterman</u>	<u>3908 Lakeshore</u>
<u>Bene Sklare</u>	<u>1481 Blake P. Berk OAK 94712</u>
<u>Wallace Scott</u>	<u>317 Lester Ave 94606</u>

Send to Oakland Tree Department, 7101 Edgewater Drive Building #4, Oakland, CA 94621

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Name	Address
Kimberly Adams	339 Hanover Ave
Kirk Ray Jones	339 HANOVER
JAMES WAGNER	343 HANOVER AVE
Jason Bush	595 Merritt Ave #8
Patrick Cross	1261 Excelsior Ave.
Evan Sklar	3826 Fruitvale Ave
Jonathan Randolph	1011 Prestige Glen Rd.
Justin Monroe	644 Brooklyn ave.
Ajay Jaisim	3966 Champaign St. Oakland Ca
Kerry Sorce	6044 Brooklyn Ave, Oakland CA 94607

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Name

Address

Amanda Salzman

658 Vernon Oakland CA

Aisha Gordon

1481 Bake St. Berk. CA.

Josias Cohen

3925 Hanover Ave Oak

Adjia Middleton

640 Brooklyn Ave #1 Oak CA 94601

Deborah Hanousek

345 Hanover St, Oakland CA

Susan Mizulew

274 June Ave, Oakland CA

JULIA L ARANK

~~2300 Baker~~ 365 7th OAKLAND CA

NOAH SMITH

317 LESTER AVE OAKLAND

Robin Simpson

1739 45th Ave SF Ca 94122

DONG KIM

376 SANTA CLARA AVE, OAK. 94610

Send to Oakland Tree Department, 7101 Edgewater Drive Building #4, Oakland, CA 94621

# SAVE THIS HANOVER OAK TREE



The majestic Coast Live Oak (*Quercus agrifolia*) pictured above is threatened by proposed development at 335 Hanover Ave. We the undersigned neighbors oppose the cutting, removal, or damaging of this tree. This Oak provides vital aesthetic and ecological value to the community and is protected by City Ordinance. We also oppose the cutting of the Redwood and Palm trees on this property.

Name

Address

*[Handwritten signature]*  
\_\_\_\_\_

434 Perkins St., Oakland

\_\_\_\_\_

492 How St Oakland

\_\_\_\_\_

owner 334-340 Hanover Ave.

\_\_\_\_\_

1324 Grand Ave.

\_\_\_\_\_

3124 East 19th St 94601

\_\_\_\_\_

444 Lee St, Apt 14 Oakland, CA 94610

\_\_\_\_\_

482 Wesley Ave, Oakland 94606

\_\_\_\_\_

\_\_\_\_\_

Send to Oakland Tree Department, 7101 Edgewater Drive Building #4, Oakland, CA 94621

CITY OF OAKLAND  
OFFICE OF PARKS & RECREATION

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

TREE REMOVAL PERMIT APPEAL FORM

05 MAY 20 PM 4: 58

- 1. Date: MAY 20, 2005
- 2. Appellant's Name: Keith Wilson and/or Jessica Seaton
- 3. Appellant's Address: 210 STONEWALL ROAD\*  
City, State & Zip: Berkeley Ca 94705  
Telephone #: (510) 290-9221
- 4. Tree Removal Permit Number: DR04-019
- 5. Address of Tree Removal: 335 HANOVER ST. OAKLAND
- 6. Basis for Appeal: 4

Please see Attached.

I HEREBY CERTIFY UNDER PENALTY OF PERJURY, THAT I AM THE OWNER OF:

- THE REAL PROPERTY DESCRIBED IN (5) ABOVE, OR
- REAL PROPERTY ADJOINING AND/OR CONFRONTING THE REAL PROPERTY DESCRIBED IN (5) ABOVE.

Signature: [Handwritten Signature] Date: MAY 20, 2005  
\*owner: 334, 336, 338 + 340 Hanover St.

FOR OFFICE USE ONLY

Appeal Hearing Date: 9/20/05  
Received By: Crystal Bing  
Appeal Fee Paid: 50-  
Receipt #: 466

FAXED  
MAY 23 2005  
BY: CB

\*\$50 fee for Tree Appeal

Note: Appeals must be heard by the tree committee at its next scheduled meeting.

Re: Appeal of the Tree Permit #DR04-019 to allowing removal the major trees At 335 Hanover Street for the construction of 9 condos.

Basis for Appeal: (OMC section 12.36.050 (B)(1)(a)  
The developers, S.& K. Leung, have been fully aware that the neighborhood was not in favor of cutting down these three trees. The trees are important to the quality of life in the neighborhood and provide refuge and nesting for wildlife.

The developers and the City of Oakland were provided with signed petitions to save the trees over a year and a half ago. Since that time the developers have redesigned the project several times to respond to the Design Review Commission concerns (and other concerns of out of scale massing and infringement on the adjacent neighbors and Hanover Street) and have not attempted to design around the saving of the trees, the California Live Oak in particular. It is reasonable to request a redesign of this project. The loss in buildable square footage is a benefit to the future owners who will live at the condos at 335 Hanover, increasing the monetary value to the developers. It will also be a benefit to the neighbors; especially the families at 331 Hanover who live in motel style apartments with living room windows directly exposed to this project and need the trees for screening and protecting their privacy.

There are very few native Live Oak trees left in the neighborhood. I have one on my property at 340 Hanover Street which I cherish and the large Live Oak tree behind me at 319 Lester Street is subject to destruction by a similar project (APN 021-0227-031-00)

As the owner of four cottages on a much larger piece of land, I know that this project can be economically rewarding for the developers and their foreign investors and still save the mature trees.

Keith Wilson

May 9, 2004  
456 Stow Avenue  
Oakland, CA 94604  
(510) 839-5681  
[beneg@pacbell.net](mailto:beneg@pacbell.net)

Tree Section  
City of Oakland  
Municipal Service Center  
7101 Edgewater Drive  
Oakland, CA 94621  
Fax: (510) 615-5845

To Whom It May Concern:

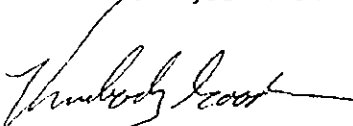
We are writing to register our concerns regarding the application for a tree removal permit (# DR04-019) at 335 Hanover Street, which is adjacent to the rear of our property at 456 Stow Avenue.

Although we understand that increased housing availability is a priority in Oakland, we object to the unnecessary removal of multiple protected trees (the permit application cites 3 protected trees, but page A2 of the plans submitted to the zoning department indicates 4 trees to be removed: a 6" blackwood acacia, a 10" redwood, a 28" coast live oak, and a 30" date palm).

The redwood, coast live oak, and date palm are all on the very edges of the property, which should allow for a reasonable compromise between the footprint of the proposed building and the preservation of these trees. While the applicants may argue that removing the trees is necessary to allow for a parking garage that extends the entire width of their lot, this would not be necessary if the applicants were proposing a structure more in keeping with the scale of the surrounding properties. Reducing the number of proposed units would reduce the amount of parking required, and would therefore make the preservation of at least one or two of these trees feasible.

All of these trees—and especially the coast live oak—add to the character of the neighborhood, provide a habitat for our local wildlife, and help prevent erosion in our hillside neighborhood. No handful of 5-gallon shrubs, no matter how attractive, can substitute for the loss of a majestic native oak that was here before we were born and should outlive our grandchildren.

With thanks for your consideration,



Kim Goodwin  
Residents and property owners, 456 Stow Avenue



Bené Gatzert

cc:  
Councilmember Jane Brunner  
Councilmember Nancy Nadel  
Maurice Brenyah-Addow, Case Planner  
Members of the Planning Commission

TO \_\_\_\_\_  
 DEPT. ATW  
 CO. CFC

HP FAX  
 FROM \_\_\_\_\_  
 DATE \_\_\_\_\_

41, 343, & 345 Hanover Ave  
 id, CA 94606

March 5 FAX: \_\_\_\_\_

Maurice Brenyah-Addow  
 City of Oakland  
 Planning & Zoning  
 250 Frank Ogawa Plaza, Second Floor  
 Oakland, CA 94612

**Re: Proposed Condominium Development at 335 Hanover Ave., Oakland**

Mr. Brenyah-Addow,

We are writing you this letter to fully express our concerns regarding the proposed development of 335 Hanover Avenue, in Oakland. While we recognize the rights of our neighbors to develop their property as they see fit, we have a number of concerns that must be addressed. Our hope is that all parties can respectfully express concerns and reach compromise solutions. We must reluctantly express our opposition to the project and all related permits until such time as the project design has been modified to address the following issues:

1. Historic Trees
2. Architectural Value of the Existing Structure
3. Site Hydrology
4. Site Geology
5. Parking
6. Views
7. Shading
8. Impact to Adjacent Property Values
9. Property Management
10. Design Aesthetics

**Historic Trees**

There are currently three (3) protected trees at 335 Hanover Avenue. The City of Oakland has recognized the community, aesthetic, and ecological value of trees in OMC 12.36. Because of this, the City regulates the cutting or damaging of trees, especially Coast Live Oaks (*Quercus agrifolia*). The proposed project would remove a Redwood Tree of 10" diameter at breast height (dbh), a Palm Tree of 30" dbh, and a Coast Live Oak of 24" dbh (The sizes quoted are taken from the plans dated 2/12/2004, our observations measure the Oak at 27.3" dbh and it is not multi-stemmed). While we are concerned with the removal of the Palm and Redwood trees, we are vehemently opposed to any alteration, damage or removal of the Coast Live Oak. The Oak tree provides significant natural heritage, aesthetic, and habitat value. There is no landscape plan that can replace the value of a mature Oak like the one currently growing at 335 Hanover. All the trees are on the borders of the property and therefore reasonable design alterations could preserve them.



### **Architectural Value of the Existing Structure**

The existing structure at 335 Hanover Ave provides significant architectural and aesthetic value to the community. While the structure by itself has not been rated as historic, it does significantly increase the architectural aesthetic of the community. 335 Hanover is a beautiful old Oakland home. The property has been mismanaged for many years resulting in the need for significant repairs, but this does not detract from the aesthetic value of the structure. Past poor planning and design of large buildings in the area has detracted from the overall community aesthetic and neighborhood property values. It is our concern that the proposed project will exacerbate this trend by replacing a lovely old single family home with a complex of limited aesthetic value. We therefore must oppose the destruction of the existing structure on the property without the design of a new structure that will add to the aesthetic value of the community. We therefore would like the opportunity to appeal any demolition permit for the property.

### **Site Hydrology**

All of the properties along the top of the Hanover Avenue hill have significant drainage issues. The combination of soils with high clay content, a Mediterranean climate, and a high water table contribute to significant drainage and flooding problems. Our basements flood a couple of times each year as a result of these conditions. The proposed development at 335 Hanover will exacerbate these drainage problems by reducing the area of land available for infiltration/vegetative uptake and increase the amount of impervious surface in the area. This will increase the volume and flow draining from the property during storm events. The result may include increased flooding of neighboring properties, increased flow to City storm drain system (contrary to the intent of Oakland's NPDES permit and OMC 13.16), destabilization of the existing landslide on the property, and erosion. To ensure public safety, protect environmental quality, and prevent damage to neighboring properties, the proposed project must address site drainage concerns. Therefore we recommend that qualified professionals, including hydrologists, review and modify the project as needed.

### **Site Geology**

The USGS has mapped a landslide across the back of numerous Hanover Avenue properties including 335, 339, 341, 343, and 345. This landslide represents a danger to both public safety and private property. Any modification to the hydrology or geology on any of the properties along this slide can cause unintended and potentially catastrophic results. In particular, the proposed development at 335 Hanover would install a retaining wall across a short portion of the slide, significantly modify the soils onsite, maximize the building footprint, and significantly alter site hydrology. This could massively destabilize the existing slide thereby endangering property and public safety. Therefore we recommend that qualified professionals review the project, assess the risk of the project to neighboring properties, and develop recommendations to address their findings.

### **Parking**

The area suffers from a chronic shortage of parking. Any addition of units will exacerbate this shortage. The proposed project would add 15 underground parking spaces. This will not address the needs of the residents in the proposed 21 bedrooms in 12 units, much less

the needs of guests. As the population density of Hanover Ave already exceeds the street parking resources, any new project should increase the available parking in relation to the increase in population, not decrease it. Decreasing parking availability on Hanover could reduce property and rental values, endanger public safety, and decrease the quality of life in the community.

#### **Views**

The proposed project at 335 Hanover would significantly alter the views from 339, 341, 343, and 345 Hanover. The existing views include wonderful vistas from the side, rear, and front of the properties to Lake Merritt and Downtown Oakland. The proposed project would completely destroy or significantly alter the views from the front of our houses, three decks, and five bedrooms. In addition to the obfuscation of valued landscapes and structures, the proposed building would tower over the back yards of 339-345 Hanover impinging upon our privacy and the value of our open space.

#### **Shading**

The proposed project would be a large four level building covering much of the property footprint. Neither the apartment complex nor the residential building on either side of 335 Hanover exceeds two levels. The proposed project would tower over both its neighbors and significantly shade both structures. This would impinge on our ability to sustain a garden or install solar panels, which we intend to do. Additionally, it would significantly decrease the quality of life for residents of neighboring properties. We feel that the project should not exceed the height of the neighboring properties.

#### **Impact to Adjacent Property Values**

The cumulative impact of the afore-mentioned issues will be a significant reduction in property values to the neighborhood. A redesigned project that adequately addresses these issues could add to the aesthetic and economic welfare of the area.

#### **Property Management**

The existing management of 335 Hanover is poor. The structure has suffered neglect and inadequate maintenance. The open spaces on the property contain trash, debris, and numerous nonnative invasive plant species. Neighboring properties are invaded by many of these species, in particular Carpet Weed, German Ivy, and Himalayan Blackberry. The fences around the property are in a state of disrepair. Due to this management, the property is a blight to the neighborhood and provides excellent pest habitat. Numerous requests to control the vegetation, repair the fence, and clean the property have not been addressed.

In addition to existing problems with the property management, we are concerned with how future problems will be addressed if the proposed project is constructed. We are unable to obtain cooperation with one property owner at 335 Hanover, what recourse will there be to ensure the proper management and maintenance of a condominium facility with 12 owners? It is vital to the proper functioning of a community to have property owners who are accountable to each other and to local codes. The existing property management and project proposal do not address this need.



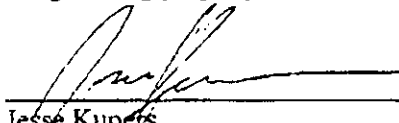
**Design Aesthetics**

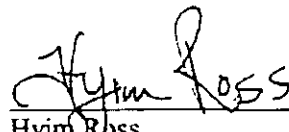
As was mentioned in the section on architectural value above, the existing structure at 335 Hanover is a beautiful old home. The current design proposal is for a complex that lacks any of the beauty and charm of the existing building. Cider block walls would replace wood shingles and a common roofline would be marred by a towering structure. We hope that the mistakes of past design review for apartment complexes in the area will not be repeated at 335 Hanover.

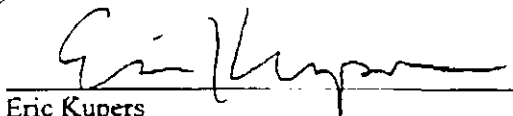
We want any project at 335 Hanover to fully address the issues outlined in this letter. We recognize the right of the owners of 335 Hanover to develop their property, but we must insist that any project be consistent with existing codes, and the aesthetic and community values of the neighborhood.

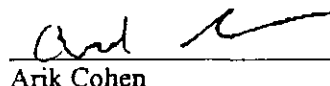
The current project design is unacceptable to us due to the above listed issues. Therefore, we **request the opportunity to appeal any and all permits associated with the proposed condominium development at 335 Hanover Ave., in Oakland (including but not limited to the demolition permit, tree permit, design review, and building permit).** Please keep us all informed of all related permit applications and of our rights of review and appeal as concerned neighbors.

Sincerely,  
Neighboring property owners

  
\_\_\_\_\_  
Jesse Kupers  
339 Hanover Ave

  
\_\_\_\_\_  
Hyim Ross  
341 Hanover Ave

  
\_\_\_\_\_  
Eric Kupers  
343 Hanover Ave

  
\_\_\_\_\_  
Arik Cohen  
345 Hanover Ave

CC: Sylvia Leung, Property Owner  
Ed Manasse, Planning and Zoning  
Calvin Wong, Building Services  
Tree Department, Life Enrichment Agency

<p><b>TREE PERMIT</b>                  City of Oakland, Public Works Agency</p>
---

Permit #DR04-019  
 335 Hanover Street

Approved: May 13, 2005  
 Expires: One year from date of issuance

Applicant: Sylvia Leung & Kenneth Leung (March 2, 2004)  
 Barbara Armstrong (January 21, 2005)

Removal Approved

#1	Coast Redwood	#3	Canary Island Date Palm
#2	Coast Live Oak		

Preservation Required

		▶	All other protected trees

As per Chapter 12.36 of the Oakland Municipal Code, this Development-related permit approves the removal of three (3) protected trees, subject to conditions of approval. This permit is effective five (5) working days after the date of this decision unless appealed as explained below. This permit is defined as a Development-related permit due to the proposed 9-unit residential building development on the site.

This decision of the Public Works Agency, Tree Services Section may be appealed by the applicant, or the owner of any "adjoining" or "confronting" property, to the City Council within five (5) working days after the date of this decision and by 5:00 p.m. The term "adjoining" means immediately next to, and the term "confronting" means in front of or in back of. An appeal shall be on a form prescribed by and filed with the City Clerk, at One Frank H. Ogawa Plaza, second floor. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the City or wherein such decision is not supported by the evidence in the record and must include payment of \$50.00, in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal this decision and raise any and all issues in your appeal may preclude you from challenging this determination in court.

**OAKLAND MUNICIPAL CODE SECTION 12.36.050(A) FINDINGS**

The application complies with Section 12.36.050(A)(1) of the Oakland Municipal Code. One Coast Redwood (#1), one Coast Live Oak (#2) and one Canary Island Date Palm (#3) need to be removed to construct a 9-unit residential building. The trees are located within the footprint of the building or in close proximity and must be removed to allow space for the project. The Coast Live Oak (#2) and the Canary Island Palm (#3) are jointly owned and permission has been granted by the adjacent property owner to remove these trees based on the submitted site plan dated March 9, 2005.

**OAKLAND MUNICIPAL CODE SECTION 12.36.050(B) FINDINGS**

**Tree removal cannot be avoided by reasonable re-design (OMC Section 12.36.050(B)(1)(a)).**

A re-design of the site plan, prior to construction, is not reasonable. If any of the trees proposed for removal were required to be saved, the building would have to be significantly reduced in order to provide adequate space for the trees' canopies and to prevent damage to their root systems. The loss in total livable floor area of the building would be significant and cannot be made up by re-design. Preservation of the Oak tree would require the building's upper three floors, including living space, stairs, hallways and group open space to be reduced by approximately 5,445 square feet.

**Tree removal cannot be avoided by trimming, thinning, tree surgery or other reasonable treatment (OMC Section 12.36.050 (B)(1)(b)).**

The Oak tree's canopy extends 29 feet toward the center of the property and has a 46 foot spread from front to rear. As the property is fifty feet wide, the tree's canopy covers more than half of the width of the property. This tree's branch structure would not permit severe pruning to reduce the size of the canopy. Therefore, preservation of this tree would significantly reduce the area within this property that could be built upon.

**Adequate provisions for drainage, erosion control, land stability or windscreen have been made (OMC Section 12.36.050(B)(2)).**

As a result of the tree removals, Tree Services does not anticipate any problems with drainage, erosion control and land stability or windscreen. This lot is relatively flat. The difference in elevation between the front and the rear of the lot is 3.2 feet.

Tree canopies intercept rainfall and reduce surface erosion. Also, tree root systems help stabilize the upper portion (top 3 feet) of the soil. When the trees are removed from the site, their assistance with reducing soil erosion and stabilizing the site will be lost. This loss will be offset by the condominium building because it will cover soil that was once exposed to rainfall.

**The value of the trees is not greater than the cost of their preservation to the property owner (OMC Section 12.36.050 (B)(4)).**

The value of the trees proposed for removal using the criteria established by the International Society of Arboriculture' Guide for Plant Appraisal, 9<sup>th</sup> edition, is as follows:

Tree #	Tree Species	Diameter	Appraised Value
1	Coast Redwood	11 inches	\$3,090.00
2	Coast Live Oak	27 inches	\$14,300.00
3	Canary Island Date Palm	32 feet in height	\$7,000
<b>Total Appraised Value of trees</b>			<b>\$24,390.00</b>

The cost of preservation shall include any additional design and construction expenses required. A redesign to preserve the Oak tree was estimated to cost \$50,000.00. Therefore, there are no grounds for permit denial.

### **OAKLAND MUNICIPAL CODE SECTION 12.36.070(E) CEQA REVIEW**

No environmental review is required.

### **OAKLAND MUNICIPAL CODE SECTION 12.36.060 CONDITIONS OF APPROVAL**

#### **1. Limitations on Tree Removals**

Tree removals, as defined in the Protected Trees Ordinance, Section 12.36.020 of the Oakland Municipal Code, may not commence unless and until the applicant has obtained all other necessary permits pertinent to site alteration and construction.

#### **2. Defense, Indemnification & Hold Harmless**

*Within ten (10) business days of the filing of a claim, action or proceeding that is subject to this provision, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes this condition of approval.*

The applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Oakland, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and their respective agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, Oakland Redevelopment Agency, Oakland City Planning Commission and their respective agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the Planning and Zoning Division, Oakland City Planning Commission, the City of Oakland Redevelopment Agency or City Council relating to this project. The City shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

- 3. Debris.** All debris from the tree removal work shall be removed from the property within two weeks of it being cut. It shall be properly disposed of in a legal manner.
- 4. Tree Planting.** Insufficient planting area exists for two native replacement trees to grow to maturity. An in lieu fee of \$300.00 per native tree removed, in accordance with the City of Oakland Master Fee Schedule, shall be paid to be applied toward tree planting in city parks, streets and medians.

Trees and plants shown on the landscape plan (L-1) dated February 7, 2005, shall be installed prior to the issuance of a certificate of occupancy. All trees planted in the public right-of-way shall require prior approval by the Public Works Agency's Tree

Services Section in accordance with the City of Oakland's Street Tree Plan dated January 27, 1998.

5. **Tree Watering.** An appropriate amount of water must be applied each week, for three years, to establish the replacement trees in the landscape. The trees shall be watered by an irrigation system and timer. Any replacement tree(s) not alive and healthy within one year of planting shall be replaced at the applicant's expense.
6. **Site Posting.** The applicant shall post a copy of the tree removal permit in plain view on site while tree removal work is underway.
7. **Recordation of Conditions.** The applicant/owner(s) shall record the conditions of approval attached to this permit with the Alameda County Recorder's Office in a form prescribed by the Director of Public Works.

Smith 5-13-05      Don Halligan 5-13-05  
Arboricultural Inspector      Date      for Director      Date

Trunk Formula Method Work Sheet

Case # \_\_\_\_\_ Property 335 Hanover Date 5-5-05  
 Appraiser G. Smith

Field Observations

1. Species Coastal Redwood
2. Condition 90 %
3. Trunk Circumference \_\_\_\_\_ in./cm Diameter 11 in./cm
4. Location % = [Site 80 % - Contribution 90 % + Placement 70 %]  
 + 3 = 80 %

Regional Plant Appraisal Committee and/or Appraiser Developed or Modified Information

5. Species rating 90 %
6. Replacement Tree Size (diameter) 4.25 in./cm  
 (Trunk Area) 14.6 in<sup>2</sup>/cm<sup>2</sup> TA<sub>R</sub>
7. Replacement Tree Cost \$ 902.50  
 (see Regional Information to use Cost selected)
8. Installation Cost \$ 902.50
9. Installed Tree Cost (#7 + #8) \$ 1805
10. Unit Tree Cost \$ 36.36 per in<sup>2</sup>/cm<sup>2</sup>  
 (see Regional Information to use Cost selected)

Calculations by Appraiser using Field and Regional Information

11. Appraised Trunk Area:  
 (TA<sub>A</sub> or ATA<sub>A</sub>; use Tables 4.4-4.7)  
 or  $c^2$  (#3) \_\_\_\_\_ × 0.08  
 or  $d^2$  (#3) \_\_\_\_\_ × 0.785  
 = 96 in<sup>2</sup>/cm<sup>2</sup>
12. Appraised Tree Trunk Increase (TA<sub>INCR</sub>) =  
 TA<sub>A</sub> or ATA<sub>A</sub> 96 in<sup>2</sup>/cm<sup>2</sup> (#11) - TA<sub>R</sub> 14.6 in<sup>2</sup>/cm<sup>2</sup> (#6) = 81.4 in<sup>2</sup>/cm<sup>2</sup>
13. Basic Tree Cost = TA<sub>INCR</sub> (#12) 81.4 in<sup>2</sup>/cm<sup>2</sup> × Unit Tree Cost (#10) \$ 36.36 = \$ 2959.70  
 per in<sup>2</sup>/cm<sup>2</sup> - Installed Tree Cost (#9) \$ 1805 = \$ 4764.70
14. Appraised Value = Basic Tree Cost (#13) \$ 4764.70 × Species rating  
 (#5) 90 % × Condition (#2) 90 % × Location (#1) 80 % = \$ 3087.52
15. If the Appraised Value is \$5,000 or more, round it to the nearest \$100; if it  
 is less, round to the nearest \$10.
16. Appraised Value = (#14) \$ 3,090

Items 7 through 10 are determined by the Regional Plant Appraisal Committee. The Wholesale Replacement Tree Cost, the Retail Replacement Tree Cost, or the Installed Tree Cost (#9) divided by the Replacement Tree Size (#6) can be used for the Unit Tree Cost (#10), or it can be set by the Regional Plant Appraisal Committee.



Trunk Formula Method Work Sheet

Case # \_\_\_\_\_ Property 335 Hanover Date 5-5-05  
 Appraiser: G. Smith

Field Observations

1. Species Quercus agrifolia
2. Condition 80 %
3. Trunk Circumference \_\_\_\_\_ in./cm Diameter 27 in./cm
4. Location % = [Site 70% + Contribution 80% + Placement 70%]  
 ÷ 3 = 73%

Regional Plant Appraisal Committee and/or Appraiser-Developed  
 or-Modified Information

5. Species rating 90 %
6. Replacement Tree Size (diameter) 4.25 in./cm  
 (Trunk Area) 14.6 in<sup>2</sup>/cm<sup>2</sup> TA<sub>R</sub>
7. Replacement Tree Cost \$ 902.50  
 (see Regional Information to use Cost selected)
8. Installation Cost \$ 902.50
9. Installed Tree Cost (#7 + #8) \$ 1805
10. Unit Tree Cost \$ 45.46 per in<sup>2</sup>/cm<sup>2</sup>  
 (see Regional Information to use Cost selected)

Calculations by Appraiser using Field and Regional Information

11. Appraised Trunk Area:  
 (TA<sub>A</sub> or ATA<sub>A</sub>; use Tables 4.4-4.7)  
 or c<sup>2</sup> (#3) \_\_\_\_\_ × 0.08  
 or d<sup>2</sup> (#3) 17 × 0.785 ] = 572 in<sup>2</sup>/cm<sup>2</sup>
12. Appraised Tree Trunk Increase (TA<sub>INCR</sub>) =  
 TA<sub>A</sub> or ATA<sub>A</sub> 572 in<sup>2</sup>/cm<sup>2</sup> (#11) - TA<sub>R</sub> 14.6 in<sup>2</sup>/cm<sup>2</sup> (#6) = 557.4 in<sup>2</sup>/cm<sup>2</sup>
13. Basic Tree Cost = TA<sub>INCR</sub> (#12) 557.4 in<sup>2</sup>/cm<sup>2</sup> × Unit Tree Cost (#10) \$ 45.46 = \$25,339.40  
 per in<sup>2</sup>/cm<sup>2</sup> - Installed Tree Cost (#9) \$ 1805 = \$ 27144.40
14. Appraised Value = Basic Tree Cost (#13) \$ 27144.40 × Species rating  
 (#5) 90% × Condition (#2) 80% × Location (#4) 73% = \$ 14,267.09
15. If the Appraised Value is \$5,000 or more, round it to the nearest \$100; if it  
 is less, round to the nearest \$10.
16. Appraised Value = (#14) \$ 14,300.

Items 7 through 10 are determined by the Regional Plant Appraisal Committee. The Wholesale Replacement Tree Cost, the Retail Replacement Tree Cost, or the Installed Tree Cost (#9) divided by the Replacement Tree Size (#6) can be used for the Unit Tree Cost (#10), or it can be set by the Regional Plant Appraisal Committee.

# Trunk Formula Method Work Sheet

Case # \_\_\_\_\_ Property 335 Hanover Date 5/5/05  
 Appraiser G. Smith

## Field Observations

1. Species Phoenix canariensis
2. Condition 90 %
3. Trunk Circumference \_\_\_\_\_ in./cm Trunk Height 32' Diameter 32' in./cm = \$ 375 per trunk foot
4. Location % = [Site 80% + Contribution 90% + Placement 70%] ÷ 3 = 80%

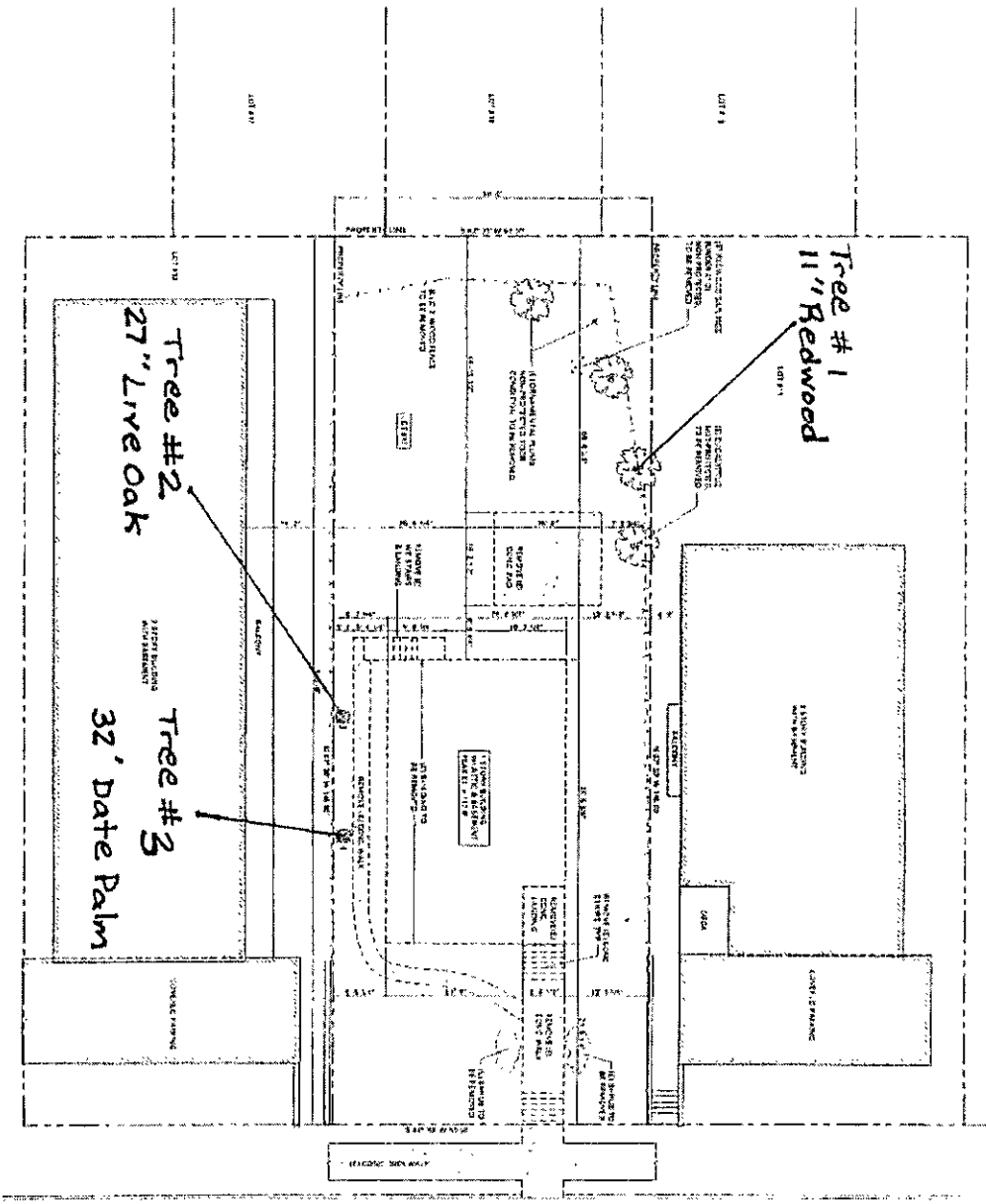
## Regional Plant Appraisal Committee and/or Appraiser-Developed or -Modified Information

5. Species rating 70 %
6. Replacement Tree Size (diameter) 4.25 in./cm  
 (Trunk Area) 14.6 in<sup>2</sup>/cm<sup>2</sup> TA<sub>R</sub>
7. Replacement Tree Cost \$ 902.50  
 (see Regional Information to use Cost selected)
8. Installation Cost \$ 902.50
9. Installed Tree Cost (#7 + #8) \$ 1805
10. Unit Tree Cost \$ 37 per in<sup>2</sup>/cm<sup>2</sup>  
 (see Regional Information to use Cost selected)

## Calculations by Appraiser using Field and Regional Information

11. Appraised Trunk Area:  
 (TA<sub>A</sub> or ATA<sub>A</sub>; use Tables 4.4-4.7)  
 or c<sup>2</sup> (#3) \_\_\_\_\_ × 0.08  
 or d<sup>2</sup> (#3) \_\_\_\_\_ × 0.785  
 = \_\_\_\_\_ in<sup>2</sup>/cm<sup>2</sup> 32' × \$ 375 = \$ 12,000
12. Appraised Tree Trunk Increase (TA<sub>INCR</sub>) =  
 TA<sub>A</sub> or ATA<sub>A</sub> \_\_\_\_\_ in<sup>2</sup>/cm<sup>2</sup> (#11) - TA<sub>R</sub> 14.6 in<sup>2</sup>/cm<sup>2</sup> (#6) = \_\_\_\_\_ in<sup>2</sup>/cm<sup>2</sup>
13. Basic Tree Cost = TA<sub>INCR</sub> (#12) \_\_\_\_\_ in<sup>2</sup>/cm<sup>2</sup> × Unit Tree Cost (#10) \$ \_\_\_\_\_ = \$ 12,000  
 per in<sup>2</sup>/cm<sup>2</sup> + Installed Tree Cost (#9) \$ 1805 = \$ 13,805
14. Appraised Value = Basic Tree Cost (#13) \$ 13,805 × Species rating (#5) 70% × Condition (#2) 90% × Location (#4) 80% = \$ 6,980.40
15. If the Appraised Value is \$5,000 or more, round it to the nearest \$100; if it is less, round to the nearest \$10.
16. Appraised Value = (#14) \$ 7,000

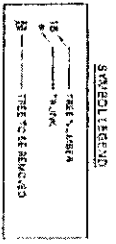
Items 5 through 10 are determined by the Regional Plant Appraisal Committee. The Wholesale Replacement Tree Cost, the Retail Replacement Tree Cost, or the Installed Tree Cost (#9) divided by the Replacement Tree Size (#6) can be used for the Unit Tree Cost (#10), or 1 can be set by the Regional Plant Appraisal Committee.



1 SITE LOCATION PLAN  
A2 1-17-20

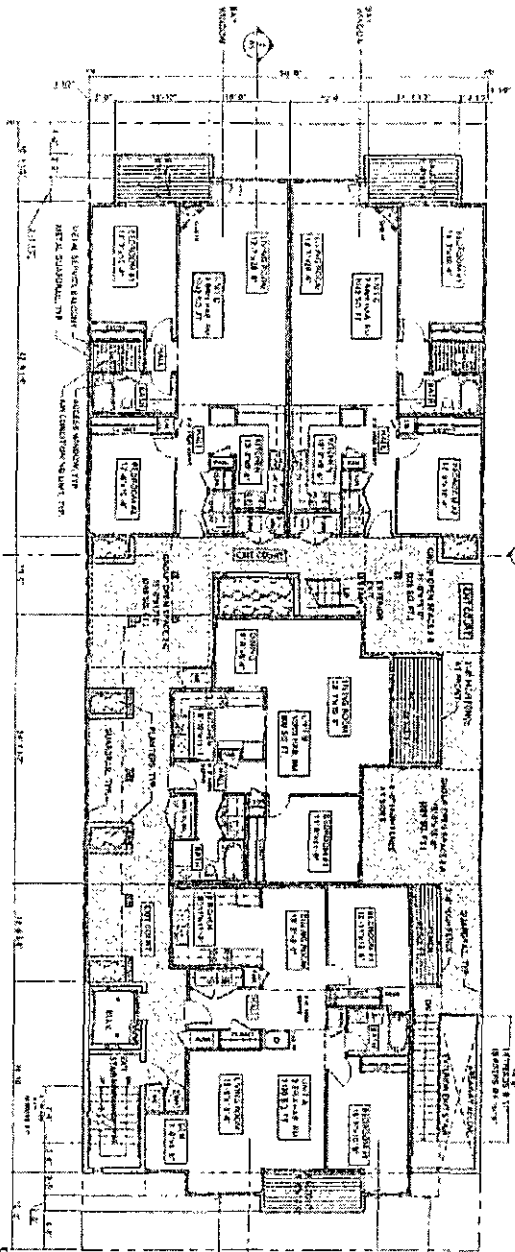
**COLLECTED PRELIST**

PIEC	SPECIES	TRUNK DIAMETER	CONDITION	PRESERVE REASON
1	11' Redwood	11"	Good	Preserve
2	27' Live Oak	27"	Good	Preserve
3	32' Date Palm	32"	Good	Preserve

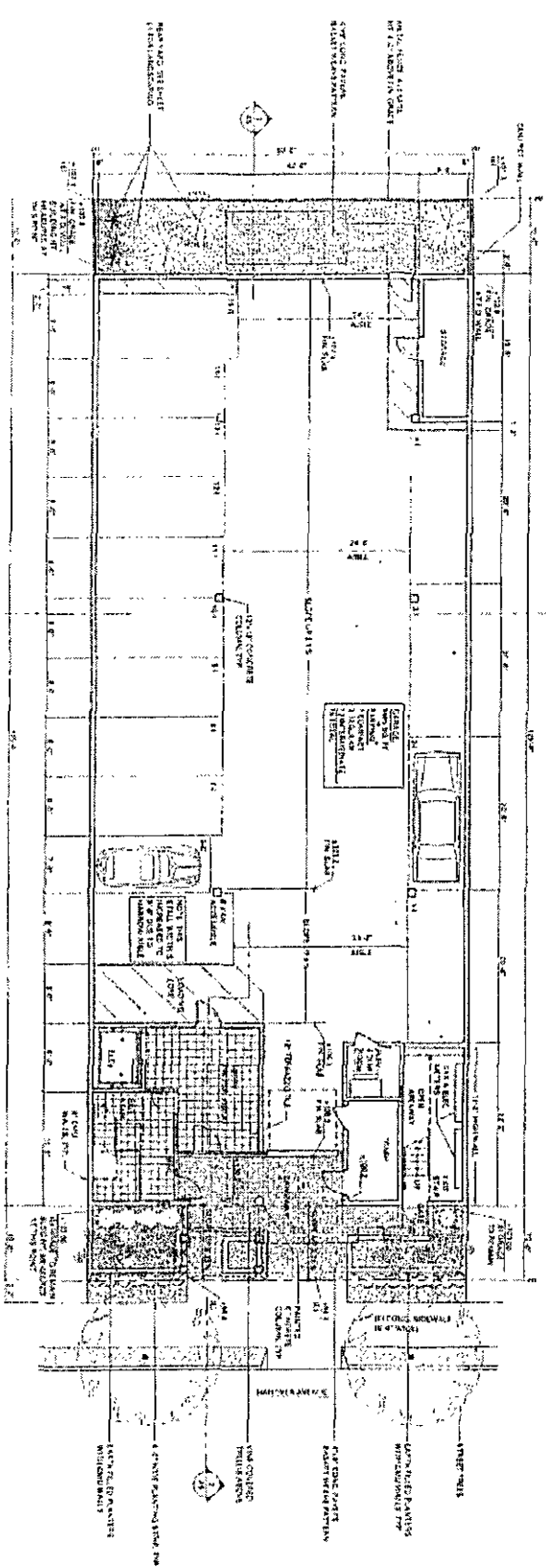


A2

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1 FLOOR PLAN LEVEL 2



01 GROUND PLAN LEVEL 1

NOTES:  
 1. DIMENSIONS ARE GIVEN IN METERS.  
 2. UNLESS NOTED OTHERWISE, ALL DIMENSIONS ARE TO FACE.  
 3. FINISHES ARE AS NOTED OR AS SHOWN ON SCHEDULES.



Scale: 1/4" = 1'-0"

308 Harbor Ave  
 San Francisco, CA 94133

Architect:  
 308 Harbor Ave  
 San Francisco, CA 94133  
 Tel: 415.774.1111  
 Fax: 415.774.1112  
 Internet: www.308harbor.com

Contractor:  
 308 Harbor Ave  
 San Francisco, CA 94133  
 Tel: 415.774.1111  
 Fax: 415.774.1112  
 Internet: www.308harbor.com

AC

# 335 Hanover



05/06/2005

05 OCT 2005 4:38 PM

05 OCT -6 PM 4:38

Approved as to Form and Legality

*Margaret Fujita*  
Oakland City Attorney's Office

## OAKLAND CITY COUNCIL

Resolution No. \_\_\_\_\_ C.M.S.

Introduced by Councilmember \_\_\_\_\_

**RESOLUTION DENYING THE APPEAL FILED BY JESSE KUPERS, KIM GOODWIN, DEBORAH COWDER, KEITH WILSON AND JESSICA SEATON AGAINST THE DECISION OF THE PUBLIC WORKS AGENCY APPROVING THE ISSUANCE OF TREE REMOVAL PERMIT DR04-019 FOR 335 HANOVER AVENUE, IN ORDER TO BUILD A NINE UNIT CONDOMINIUM BUILDING**

**WHEREAS**, on March 2, 2004, Sylvia Leung & Kenneth Leung (“Applicants and Property Owners”) and on January 21, 2005, Barbara Armstrong, (“Applicant and Agent for Property Owners”) submitted an application for Tree Removal Permit (TRP) DR04-019 to remove three trees from 335 Hanover Avenue in order to build a nine unit condominium building, and

**WHEREAS**, the project was redesigned, reducing the building’s size from 12 units to 9 units, and

**WHEREAS**, due notice of the application was given to all affected and interested parties; and

**WHEREAS**, on May 19, 2004, the City Planning Commission held a public hearing on the construction of the condominium building prior to the project being redesigned and held its decision pending the final decision of the Tree Removal Permit, and

**WHEREAS**, on May 13, 2005, the Public Works Agency (PWA) approved the issuance of TRP DR04-019 for the removal of three protected trees from said property; and

**WHEREAS**, the decision was justified on the basis that Section 12.36.050 (A) (1) of the Protected Trees Ordinance justifies approval of the tree removals based on the trees’ proximity to a proposed structure; and

**WHEREAS**, on May 18 - 20, 2005, appeals were filed by Jesse Kupers, Kim Goodwin, Deborah Cowder, Keith Wilson and Jessica Seaton (“Appellants”), with the Office of the City Clerk against the PWA decision approving TP DR04-019; and

**WHEREAS**, the appeal came before the City Council on October 18, 2005, and the appellants, and interested neutral parties were given ample opportunity to participate in the public hearing and were given a fair opportunity to submit relevant evidence to the City Council; and

**WHEREAS**, the public hearing on the appeal and application was closed by the City Council on October 18, 2005; now, therefore, be it

**RESOLVED:** That the City Council, prior to making its decision on the appeal, has independently reviewed and hereby adopts the CEQA findings of the City's Environmental Review Officer (incorporated herein by reference) and finds that the Project is exempt from CEQA under CEQA Guidelines Section 15332 and directs that the Review Officer prepare a Notice of Exemption for filing at the County Recorder; and be it

**FURTHER RESOLVED:** That the City Council, having heard, considered and weighed all the evidence presented on behalf of all parties and being fully informed of the application and related materials, finds, for all the reasons stated in this resolution, the October 18, 2005, City Council Agenda Report and the May 13, 2005, PWA decision (hereby incorporated by reference), that the appeal should be denied, the decision of the Director, PWA, approving tree removals is affirmed, and the application for tree removals is approved subject to the conditions of approval (attached as Attachment A and hereby incorporated by reference as if fully set forth herein); and be it

**FURTHER RESOLVED:** That the record relating to this application and appeal can be located at 7101 Edgewater Drive, Building 4, and 250 Frank H. Ogawa Plaza, 2<sup>nd</sup> Floor, Oakland, and includes, without limitation the following:

1. the application, including all accompanying maps and papers;
2. all plans submitted by the applicant and his representatives;
3. all staff reports, decision letters and other documentation and information produced by or on behalf of the City, and all notices in relation to the application and attendant hearings;
4. all oral and written evidence received by the City staff, and City Council before and during the public hearings on the application and appeals;
5. all matters of common knowledge and all official enactment's and acts of the City, such as (a) Oakland Municipal Code, (b) other applicable City policies and regulations; and (c) all applicable state and federal laws, rules and regulations; and be it

**FURTHER RESOLVED:** That the custodian of the record for tree-related materials is the Tree Services Section located at 7101 Edgewater Drive, Municipal Service Center building

#4, Room 405; CEQA-related materials are with the Community and Economic Development Agency, Planning and Zoning Division, 250 Frank H. Ogawa Plaza, 2<sup>nd</sup> Floor, Oakland and be it

**FURTHER RESOLVED:** That the recitals contained in this resolution are true and correct, and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2005

**PASSED BY THE FOLLOWING VOTE:**

AYES - BRUNNER, BROOKS, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND  
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST:

\_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California



**OAKLAND MUNICIPAL CODE SECTION 12.36.060 CONDITIONS OF APPROVAL****1. Limitations on Tree Removals**

Tree removals, as defined in the Protected Trees Ordinance, Section 12.36.020 of the Oakland Municipal Code, may not commence unless and until the applicant has obtained all other necessary permits pertinent to site alteration and construction.

**2. Defense, Indemnification & Hold Harmless**

*Within ten (10) business days of the filing of a claim, action or proceeding that is subject to this provision, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes this condition of approval.*

The applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Oakland, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and their respective agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, Oakland Redevelopment Agency, Oakland City Planning Commission and their respective agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the Planning and Zoning Division, Oakland City Planning Commission, the City of Oakland Redevelopment Agency or City Council relating to this project. The City shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

**3. Debris.** All debris from the tree removal work shall be removed from the property within two weeks of it being cut. It shall be properly disposed of in a legal manner.

**4. Tree Planting.** Insufficient planting area exists for two native replacement trees to grow to maturity. An in lieu fee of \$300.00 per native tree removed, in accordance with the City of Oakland Master Fee Schedule, shall be paid to be applied toward tree planting in city parks, streets and medians.

Trees and plants shown on the landscape plan (L-1) dated February 7, 2005, shall be installed prior to the issuance of a certificate of occupancy. All trees planted in the public right-of-way shall require prior approval by the Public Works Agency's Tree Services Section in accordance with the City of Oakland's Street Tree Plan dated January 27, 1998.

**5. Tree Watering.** An appropriate amount of water must be applied each week, for three years, to establish the replacement trees in the landscape. The trees shall be watered by an irrigation system and timer. Any replacement tree(s) not alive and healthy within one year of planting shall be replaced at the applicant's expense.

**6. Site Posting.** The applicant shall post a copy of the tree removal permit in plain view on site while tree removal work is underway.

7. **Recordation of Conditions.** The applicant/owner(s) shall record the conditions of approval attached to this permit with the Alameda County Recorder's Office in a form prescribed by the Director of Public Works.

**12.36.050 Criteria for tree removal permit review.**

**A. In order to grant a tree removal permit, the city must determine that removal is necessary in order to accomplish any one of the following objectives:**

- 1. To insure the public health and safety as it relates to the health of the tree, potential hazard to life or property, proximity to existing or proposed structures, or interference with utilities or sewers;**
- 2. To avoid an unconstitutional regulatory taking of property;**
- 3. To take reasonable advantage of views, including such measures as are mandated by the resolution of a view claim in accordance with the view preservation ordinance (Chapter 15.52 of this code);**
- 4. To pursue accepted, professional practices of forestry or landscape design. Submission of a landscape plan acceptable to the Director of Parks and Recreation shall constitute compliance with this criterion;**
- 5. To implement the vegetation management prescriptions in the S-11 site development review zone.**

**B. A finding of any one of the following situations is grounds for permit denial, regardless of the findings in subsection A of this section:**

- 1. Removal of a healthy tree of a protected species could be avoided by:**
  - a. Reasonable redesign of the site plan, prior to construction;**
  - b. Trimming, thinning, tree surgery or other reasonable treatment.**
- 2. Adequate provisions for drainage, erosion control, land stability or windscreen have not been made in situations where such problems are anticipated as a result of the removal.**
- 3. The tree to be removed is a member of a group of trees in which each tree is dependent upon the others for survival.**
- 4. The value of the tree is greater than the cost of its preservation to the property owner. The value of the tree shall be measured by the Tree Reviewer using the criteria established by the International Society of Arboriculture, and the cost of preservation shall include any additional design and construction expenses required thereby. This criterion shall apply only to development-related permit applications.**

**C. In each instance, whether granting or denying a tree removal permit, findings supporting the determination made pursuant to subsection A or B of this section, whichever is applicable, shall be set forth in writing. (Prior code § 7-6.05)**